

ORGANON INCORPORATED
c/o Dryden Advisory Group, LLC
333 Spruce Street
Harrisburg, PA 17113,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. U. 98-501

FINAL ORDER

The Revenue Department denied a use tax refund requested by Organon Inc. (ATaxpayer@) for August 1994 through July 1997. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on April 7, 1999. John Ridley represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer shipped drug samples into Alabama and gave the samples away to licensed physicians during the subject period. The Taxpayer paid Alabama use tax on its cost of the samples. The Taxpayer subsequently petitioned for a refund of the tax. The Department denied the refund. The Taxpayer appealed.

The Department now concedes that the refund should be issued based on the Alabama Court of Civil Appeals opinion in Baptist Medical Center v. State, Dept. of Revenue, 545 So.2d 45 (Ala.Civ.App. 1987). In that case, the Court held that drugs dispensed by a hospital through its pharmacy to hospital patients were

exempt pursuant to Code of Ala. 1975, ' 40-23-4.1. The Department's position is that because the drugs would be exempt from sales tax if sold in Alabama, they should also be exempt from use

tax when given away in Alabama. The Department is directed to issue the Taxpayer a refund of \$15,609.97, plus applicable interest.

Although bound to follow the decision, I respectfully disagree with the majority opinion in Baptist Medical Center, and instead agree with Judge Holmes-dissent. I also note that ' 40-23-4.1 is a sales tax exemption only. See, State, Dept. of Revenue v. Medical Care Equipment, Inc., Civ. App. 2980092, decided April 16, 1999. There is no similar exemption from Alabama use tax. By conceding that the Taxpayer is due a use tax refund in this case, the Department apparently takes the position that Baptist Medical Center expanded the exemption to include both sales tax and use tax. This Final Order does not indicate that I agree that Baptist Medical Center applies to the facts of this case, or that the exemption at ' 40-23-4.1 applies to use tax.

Entered April 19, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: J. Wade Hope, Esq.
John Ridley
Ginger Buchanan